

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

TONY CHANNELL,

Plaintiff,

v.

**NUTRITION DISTRIBUTION, LLC,
d/b/a ANABOLIC EXTREME,
DESIGNER SUPPLEMENTS, INC.,
et al.,**

Defendant.

*
*
*
*
*
*
*
*
*
*
*

CASE NO. 2:07-cv-01103-TFM

MOTION TO REMAND

Plaintiff, Tony Channell, files his motion to remand this action to the Circuit Court of Covington County, Alabama, pursuant to 28 U.S.C. § 1447(c). In support thereof, Plaintiff states the following:

1. This Court lacks subject matter jurisdiction.
2. Defendant, Designer Supplements, Inc., has failed to prove by a preponderance of the evidence that the amount in controversy requirement of 28 U.S.C. § 1332(a) has been met, as required by *Lowery v. Alabama Power Co.*, 483 F.3d 1184 (11th Cir. 2007).
3. Defendant's removal is procedurally defective because it did not obtain written consent of all served defendants before removal.

These grounds are discussed in more detail in Plaintiffs' Brief in Support of Motion to Remand and Response in Opposition to Defendant Designer Supplements, Inc.'s Motion to Submit Limited Discovery on the Issue of Damages, which is filed contemporaneously with this motion.

/s/ W. Roger Smith, III

W. Roger Smith, III (SMI257)
Matthew E. Munson (MUN015)
BEASLEY, ALLEN, CROW,
METHVIN, PORTIS, & MILES, P.C.
234 Commerce Street
Montgomery, Alabama 36104

David F. Miceli (MIC006)
DAVID F. MICELI, L.L.C.
119 Maple Street, Suite 201
Carrollton, Georgia 30117

Attorneys for Plaintiff

OF COUNSEL:

BEASLEY, ALLEN, CROW, METHVIN,
PORTIS & MILES, P.C.
Post Office Box 4160
Montgomery, Alabama 36103-4160
Phone (334) 269-2343
Fax (334) 954-7555

CERTIFICATE OF SERVICE

I hereby certify that foregoing document was filed electronically on this 4th day of January, 2008 by uploading the same to the Court's CM/ECF system which will send a Notice of Electronic Filing upon all counsel of record.

/s/ W. Roger Smith, III

OF COUNSEL